

D. L. PERCELL

IBLA 78-541

Decided March 28, 1979

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting oil and gas lease offers A-10620, A-10621, A-10622, A-10631, A-10632.

Set aside and remanded in part; dismissed in part.

1. Act of October 8, 1964—Oil and Gas Leases: Generally—Public Lands: Leases and Permits

Where the State Office, following recommendations of the National Park Service, rejects applications for oil and gas leases under the "excepted areas" provisions of 43 CFR 3111.1-3(e)(4), and where it appears that large portions of the applied-for lands do not fall within such areas, the case will be remanded to reconsider whether the leasing of lands not in excepted areas would be appropriate.

APPEARANCES: D. L. Percell, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

D. L. Percell has appealed from a decision dated June 29, 1978, by the Arizona State Office, Bureau of Land Management (BLM), rejecting the above-designated noncompetitive oil and gas lease offers covering parcels within the Lake Mead Recreation Area. However, in his statement of reasons, appellant withdrew offer A-10632, so his appeal from the rejection of that offer is therefore dismissed.

Mineral leasing in the Lake Mead Recreation Area is authorized by the Act of October 8, 1964, 16 U.S.C. § 460n-3 (1976), which gives the Secretary of the Interior or his delegate full discretion to grant or reject lease applications. D. L. Percell, 37 IBLA 272 (1978); Rilite Aggregate Company, 26 IBLA 197 (1976); 43 CFR 3566.0-3.

The State Office decision cited as authority for rejecting appellant's offers the following portions of 43 CFR 3111.1-3(e)(4) which pertain to mineral leasing in the Lake Mead Recreation Area:

(4) Excepted areas. Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(i) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(ii) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(iii) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA-L.M. 2291).

(iv) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA-L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

The rejection of the offers was based on the recommendation of the National Park Service. Appellant asserts that the above-quoted regulatory provisions affect only a fraction of the lands for which he applied so that it is error to reject his offers in their entirety. He further indicates a willingness to accept protective stipulations with the lease.

[1] Appellant makes the same arguments here that he made in another appeal involving essentially the same issues. D. L. Percell, supra. This case requires similar disposition. In that case, we held that where an offer is rejected on the basis of the above-quoted regulation, but the offer includes areas not covered by the regulation, the case will be remanded to consider whether the leasing of lands not in the excepted areas would be appropriate.

We note that the State Office also cited consideration of the lands for inclusion in a wilderness area as a basis for rejecting the offers. However, the decision does not make clear that this would affect all the areas included in appellant's offers. Furthermore, the decision fails to give consideration to leasing the land with protective stipulations or at least state in greater detail why leasing would not be allowed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further consideration, except that the appeal with respect to offer A-10632 is dismissed.

Joseph W. Goss
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

